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In The United States Supreme Court

Larry David Smith

Plaintiff - Appellant

V.

James F. Dwyer, ET AL.

Defendants - Appellees

State of Alabama

County of Escambia

Affidavit in

Support of Motion To

Proceed in Forma,

PAUPERIS

ss.:

Larry David Smith, being duly Sworn, deposes and says
(1-) I am Plaintiff in the Above-Titled Action.
(2-) I believe I am entitled and intend to bring
this Action in the United States Supreme Court
Against the above-named defendants.

(3-) ~~Because~~ I believe that I am entitled to the Redress Sought
in this Action

(4-) ~~Because~~ Because of my Poverty, I am without funds and
unable to pay the Costs of this Action, to give Security
therefor, or to employ an Attorney.

Signature: Larry David Smith

Subscribed and Sworn To before me this 26 day,
of April 1977

L. L. J. J. J.
Notary Public

In The United States Supreme Court

GARY DAVID SMITH
Plaintiff - Appellant
v.

JAMES F. DYGMON, ET. AL.

Defendants - Appellees

Motion For
Appointment of
Counsel

Plaintiff Move in This Court for an order
Appointing Hon. Guy Sparks 409 Commercial
National Bank Bldg Anniston, Alabama, 36101, a
Member of the Alabama Bar, To Represent
Plaintiff because Plaintiff cannot afford to
employ an Attorney. This motion is based on
Plaintiff's Affidavit in Support of Plaintiff's
Motion for leave to proceed in forma pauperis
and for Appointment of Counsel. Legal Authority
for Appointment and Compensation of Counsel is
28 U.S.C. Sec. 1915 (d) and 18 U.S.C. Sec. 3006A (g),
as interpreted in McClain v. Mansson 343 F. Supp.
382 (D. Conn 1972)

GARY DAVID SMITH
P.O. Box 37
Holman Sta. AL. 36503
IN PROPRIA PERSONAM.

In The United States Supreme Court

GARY DAVID SMITH, PLAINTIFF - APPELLANT
VS.

JAMES F. DYGMON, ET. AL.

Defendants - Appellees

CASE NO: _____

APPLICATION FOR WRIT OF HABEAS CORPUS
TO THE U.S. COURT OF APPEALS, FIFTH CIRCUIT
CASE NO: 77-8141

Affidavit Oath in forma pauperis

APPLICATION BRIEF OF PLAINTIFF-APPELLANT

GARY DAVID SMITH

GARY DAVID SMITH, IN PRO SE.
P.O. Box 37
Holman Sta. AL. 36503

ISSUES PRESENTED

1. THAT APPELLATE COURT ERRED IN REFUSING TO GRANT APPEAL IN FORMA PAUPERIS IN HABEAS CORPUS PROCEEDING.
2. THAT THE DISTRICT AND APPELLATE COURTS ERRED IN FAILING TO REVIEW THE HABEAS CORPUS AS IT WAS IMPROPERLY DENTED?
3. THAT APPELLATE COURT ERRED IN REFUSING TO REVIEW THE PROCEEDINGS UPON FACE OF THE RECORD.

— PROPOSITIONS OF LAW. —

— I —

IT IS ERROR TO DENY FORMA PAUPERIS WHEN IT HAS BEEN ESTABLISHED THAT APPELLANT IS INDIGENT.
28 U.S.C. 1915 ET. SEQ. 18 U.S.C. 3006 A (4).

ADICKES V. E.T. DUPONT DE NEMOURS 335 U.S. 331, 339 (1948)

II

IT IS ERROR TO DENY REVIEW WHEN IT IS BEYOND DOUBT THAT STATE REMEDIES HAVE BEEN EXHAUSTED.

28 U.S.C. 2241-2255; U.S. CONSTITUTION AMENDMENT 14.

III

IT IS ERROR FOR APPELLATE COURT TO REFUSE TO REVIEW CASE WHEN THE RECORDS PROVE IT AS THE LAST RESORT.

U.S. CONST. AMD 14.

Argument.

When one has proven beyond doubt that there is no funds, means or collateral available to give security for the costs of such proceedings, and legitimate grounds have been assigned as to why review should be granted. Then the Court would ERR in failing to accept the case for review.

The assignment of grounds were wholly provable by the record, both upon face and in actuality. This is predicated upon the rulings in: Smith v. State, 57 Ala. App. 164, 326 So. 2d 692 (1975) Cert. denied 295 Ala — 326 So. 2d 695 (1976)

Once state remedies have been exhausted there is no alternative but to seek Habeas Corpus 28 U.S.C. 2241-2255.

Further once case has been submitted to State Supreme Court, there is no reason or requirement to go back to the state level.

Fay v. Noia 372 U.S. 391, 399 (1963)

Brown v. Allen 344 U.S. 443 (1953)

Thomas v. Cunningham 313 F.2d 934 (1963)

Evans v. Cunningham 335 F.2d 491 (1964)

Hayes v. Boston 336 F.2d 31 (1964)

Hutchins v. Dunbar 328 F.2d 111 (1964)

Curtis v. Boeger 331 F.2d 675 (1964)

Even the state admitted that Plaintiff-Appellant had exhausted all state remedies. In state's response on p. 2 last sentence of Sec. II states: "Clearly, the petitioner (Plaintiff) has exhausted his state remedies." This proves that the Appellate Court erred in failing to grant review.

Plaintiff being a layman therefore asks the Honorable Court to subpoena the records and survey them for the facts as are readily apparent therein.

Respectfully Submitted,

DATED: April 26 1977.

Larry D. Smith

Gray David Smith, Jr. Pres. Sec.

P.O. Box 37

Holman Sta. Al. 36503